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November 27, 2007

ELECTRONICALLY FILED

Ms. Marlene H. Dortch
Secretary
Office of the Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

***Ex Parte* Notice**

Re: Petition of AT&T Inc. for Forbearance under 47 U.S.C. § 160 from Enforcement of Certain of the Commission's Cost Assignment Rules - WC Docket No. 07-21

Dear Ms. Dortch:

The AdHoc Telecommunications Users Committee hereby supplements the record regarding the above-referenced matter. Grant of the above-referenced petition is foreclosed by recent Commission orders allowing AT&T to provide in-region, interstate, long distance services directly or through affiliates subject to nondominant carrier regulation as long as AT&T complies with specified safeguards and obligations.[1]

In the subject petition, AT&T requests that the Commission forbear from applying and enforcing cost allocation rules (sections 32.23 and, 32.27 of Part 32, and Subpart I of Part 64), jurisdictional separations rules (Part 36), cost apportionment rules (Part 69, Subparts D and E), "and other related rules that are completely derivative of and dependent on the foregoing rules, including cost allocation and rate of return reporting requirements…."[2]

AdHoc opposed AT&T's petition, explaining that costs are relevant to the regulatory responsibilities of the Commission and at least some state regulatory authorities. Incentive regulation, such as price caps, does not render carrier costs irrelevant. Continuing to require timely and accurate cost accounting and allocations does not constitute reimposition of rate-of-return regulation.

[1] *See, Section 272(f)(1) Sunset of the BOC Separate Affiliate and Related Requirements,* 22 FCC Rcd 16440, (2007), (*Sunset Order)*.
Petition of AT&T Inc. for Forbearance Under 47 USC Section 160 with Regard to Certain Dominant Carrier Regulations for In-Region, Interexchange Services, 22 FCC Rcd 16556, (2007), (*AT&T Order)*.

In August of this year, subsequent to the filing of the above-referenced AT&T Petition and the pleadings relating to it, the FCC released the *Sunset Order* and the *AT&T Order.* Therein the Commission made findings and imposed requirements on AT&T that are logically incompatible with granting the above-referenced AT&T Petition. The Commission found that each of the BOCs possess, "[e]xclusionary market power within its respective regions by reason of its control over these bottleneck access facilities."[3] Nevertheless, the Commission eliminated the separate subsidiary requirement for in-region, long distance service. To protect consumers and competition in the face of this exclusionary market power, the Commission retained existing non-structural safeguards and imposed additional requirements reasoning that the "[n]onstructural safeguards provide substantial protection against anticompetitive discrimination and improper cost shifting by the BOCs in connection with their provision of in-region, long-distance services."[4] Among the existing obligations BOCs are required to meet are the Commission's accounting and cost allocation rules and related reporting requirements.[5] The Commission's reasons should be dispositive of the above-referenced AT&T petition for forbearance.

> [T]he continued treatment of the costs of, and revenues from, the direct provision of in-region, long distance services as nonregulated for accounting purposes will provide an important protection against improper cost shifting by the BOCs and their independent incumbent LEC affiliates. This accounting treatment also will address concerns of continued compliance with section 254(k) of the Act, and will lessen the chance that costs associated with such services are inadvertently assigned to a local exchange or exchange access category.[6]

On the same day on which the Commission issued the *Sunset Order,* it found that it would not be in "the public interest" to grant AT&T any relief from dominant carrier regulation *beyond* what was granted in the *Section 272 Sunset Order*, specifically, the Commission found:

> As part of the new regulatory framework established in the *Section 272 Sunset Order*, AT&T will be subject to certain targeted safeguards as well as other continuing legal requirements. The framework

[3] *Sunset Order*, para 64.
[4] *Id.* paras 84, 85
[5] *Id.* para 90
[6] *See, Id.* para 94

> reflects our expert policy judgment regarding the appropriate relief from dominant carrier regulation and section 272 safeguards balanced against the competing public interest concerns. The reasons that persuaded us to adopt this new framework also persuade us that it would be contrary to the public interest to alter or eliminate it in response to AT&T's petition. Therefore we find that granting AT&T relief from dominant carrier regulation different from, or in addition to, that granted in the *Section 272 Sunset Order* would be inconsistent with the public interest under section 10 (a) (3). [footnotes omitted].[7]

In view of the foregoing and previously filed material regarding the above-referenced AT&T petition for forbearance, the Commission must reject the petition.

Respectfully submitted,

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[7] *AT&T Order,* para 7.